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Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Security Council
Sixty-seventh year

Letter dated 13 April 2012 from the Permanent Representative of South Africa to the United Nations addressed to the Secretary-General

I have the honour to transmit a copy of a letter from the representative of the Frente Polisario addressed to the President of the Security Council and dated 12 April 2012 (see annex).

I should be grateful if you would have the present letter and its annex issued as a document of the General Assembly, under agenda item 60, and of the Security Council.

(*Signed*) Baso **Sangqu**
Ambassador and Permanent Representative
of the Republic of South Africa

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Annex to the letter dated 13 April 2012 from the Permanent Representative of South Africa to the United Nations addressed to the Secretary-General

12 April 2012

I have the honour to refer to the upcoming consideration by the Security Council of the most recent report of the Secretary-General on the situation in Western Sahara (S/2012/197) and the renewal of the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO).

Since early 2011, members of the Security Council have repeatedly voiced their support for peaceful transition to democracy in light of the profound and dramatic changes sweeping through parts of the Middle East and northern Africa. These unprecedented developments have demonstrated clearly that any political solution in Western Sahara must reflect the will of its people if it is to be credible and sustainable, and if it is to foster peace, security and regional integration in the long term. It must also be based on international law, including the principles and purposes of the Charter of the United Nations.

The Frente Polisario respectfully reminds the Council that MINURSO was established in 1991 primarily to organize and supervise the conduct of a free and fair referendum on self-determination for the people of Western Sahara. As the Secretary-General notes in his most recent report, this remains the core function of the peacekeeping mission.

At its establishment, both parties to the dispute, the Frente Polisario and Morocco, agreed to cooperate with MINURSO to fulfil its unequivocal mandate. However, Morocco decided in April 2004 to halt its cooperation, clearly concerned that a free and fair referendum would lead to the people of Western Sahara choosing the option of an independent Saharawi state. We note the conclusion of the Secretary-General in his 2011 report on the situation in the Western Sahara (S/2011/249) that the need for the conduct of a referendum remains "the one major point of convergence" in the respective proposals of the two parties. With this in mind, it is now time for the Security Council to direct MINURSO to move immediately to fulfil its "principal purpose" by refreshing the voter lists, held by the United Nations in Geneva, in preparation for the conduct of a referendum.

The Frente Polisario calls attention to the very clear description in this year's report regarding the significant challenges facing MINURSO in the implementation of its existing mandate. The report recognizes that "monitoring, assessing and reporting on local developments affecting or relating to the situation in Western Sahara" are "standard peacekeeping mission functions" for which MINURSO is responsible. For obvious reasons, the Security Council must have access to reliable and credible information on such developments.

We call on the Security Council to direct Morocco to cooperate fully with MINURSO by allowing "unhindered and immediate access for the United Nations and associated personnel in carrying out their mandate" (as confirmed by Security Council resolution 1979 (2011), para. 2), and to allow free access to the Territory for diplomats, journalists, human rights organizations and other interested observers. The Frente Polisario undertakes to do the same in respect of that portion of the Territory of Western Sahara under its control, as well as in the Tindouf refugee camps.

In this context, the Frente Polisario wishes to express its deep concern at the absence of any reference in the Secretary-General's report to the failure to make progress on the establishment of an effective international mechanism for regular, independent, impartial and sustained human rights monitoring within a clear mandate covering the entire Territory and the refugee camps, as recommended by the Office of the United Nations High Commissioner for Human Rights.

The past year has demonstrated with absolute clarity that reliance on the special procedures of the Human Rights Council is not a viable route to building an independent and credible human rights monitoring and reporting capacity in Western Sahara. As confirmed by the Secretary-General in his most recent report, there has been only one visit to the Territory by a Human Rights Council special procedure, limited to a 24-hour tour of the fishing town of Dakhla by the Independent Expert in the field of cultural rights, Ms. Farida Shaheed. Ms. Shaheed's end-of-mission statement called for the immediate revocation of limits on the cultural rights of the Saharawi people, and indicated that there are indeed abuses of human rights in the Territory which demand the ongoing attention of the United Nations.

In the absence of international monitoring and assuming a continued lack of consensus among Security Council members on the issue, Moroccan authorities have over recent years instituted a significant crackdown on freedom of movement and freedom of speech in the occupied Territory, targeting Saharawi human rights defenders in a manner inconsistent with Morocco's international human rights treaty obligations. Other human rights violations perpetrated by Moroccan forces have included unfair trials, ill-treatment, torture and violence. Sporadic reports by individuals based upon infrequent trips and incomplete information are therefore completely inadequate. It is a significant stain on the credibility of the United Nations system, including the Security Council, that MINURSO remains the only United Nations peacekeeping mission established since 1978 that is operating without a human rights monitoring capacity.

On natural resources, the Frente Polisario welcomed the decision of the European Parliament in December 2011 to reject the conclusion of an agreement to extend the European Union's illegal fishing of Western Sahara's waters under the European Union-Morocco Fisheries Partnership Agreement. As an illegal occupier, Morocco has no basis for exercising sovereign rights over the Territory or waters offshore from Western Sahara, which has been listed as a Non-Self-Governing Territory under the Charter of the United Nations since 1963. In 1975, the International Court of Justice rejected outright Morocco's claim to sovereignty over the Territory, a claim that has not been recognized by any country in the world. Moreover, Morocco has never been listed, or recognized, as the Territory's administering Power, which would require an affirmative resolution of the United Nations General Assembly.

Ongoing efforts by Morocco and colluding foreign entities to explore and exploit Western Sahara's natural riches constitute a violation of the permanent sovereignty of the people of Western Sahara over their natural resources, and risk further destabilizing an already volatile situation in the Territory. At this sensitive time, the Security Council must ensure that any illegal activities with respect to Western Sahara's natural resources cease immediately.

The Frente Polisario wishes to emphasize the significant steps it has taken to counter terrorist activities in the area under its control and elsewhere in the Sahel. We have provided a detailed briefing to the Department of Peacekeeping Operations of the United Nations Secretariat on these developments, in particular our quick response to the kidnapping of three humanitarian workers working in the Tindouf refugee camps. In cooperation with neighbouring countries, the Frente Polisario's Special Military Units located and apprehended some of the cells and individuals believed to be responsible for the abductions, and we continue to cooperate with the Governments of Spain and Italy in an effort to secure the release of the hostages. We will continue to cooperate fully with the United Nations to implement further security measures to ensure the safety of MINURSO military observers.

The Frente Polisario also wishes to highlight that the Secretary-General's characterization of the "Polisario" and the "Moroccan" positions in the dispute (paras. 100 and 101 of the report) is such as to create a risk of serious misinterpretation by Council members. It is completely inaccurate to imply that it is the position of the Frente Polisario alone that Western Sahara is a Non-Self-Governing Territory. The International Court of Justice, as well as the Security Council and the General Assembly, have all reaffirmed repeatedly the international legal status of Western Sahara as a Non-Self-Governing Territory under the Charter, and the associated right of the people of Western Sahara to a process of self-determination. In other words, the people of Western Sahara must be granted their right to determine their own political future, including the possibility of independence. This is not merely a political position — it is what international law requires.

In contrast, Morocco's position that the people of Western Sahara should be required to vote only on a single option of a loose autonomy arrangement involving integration of the Territory into Morocco is inconsistent with every tenet of international law applicable to the question of achieving self-determination in situations of decolonization. As a consequence, the positions summarized by the Secretary-General are not those of the "Polisario" and "Morocco". Rather, the former is a position that is consistent with principles of international law on self-determination in situations of decolonization, and the latter is not.

Finally, I wish to express our deep concern at the repeated efforts by the delegation of Morocco to negotiate and water down the contents of the reports of the Secretary-General to the Security Council. Once again this year, we have seen substantive late changes made to the 6 April "advance copy" of the report, unusually reissued on 11 April as a "final advance copy". We note in particular the removal of a previous recommendation from the Secretary-General to the Council (in what is now paragraph 112 of the "final advance copy") that the Council sustains MINURSO "as a mechanism to implement a referendum on self-determination ...". References in the 6 April "advance copy" to Morocco's provocative installation of 21 Moroccan flags around the MINURSO headquarters in El Aaiún were also removed. This is, of course, part of an ongoing and outrageous attempt by Morocco to undermine the independence and impartiality of the United Nations, and to distort the international legal requirement for a referendum in Western Sahara.

In conclusion, and with a view to ensuring that the Council is addressed equally by both parties to the dispute, I wish to confirm the availability of the

delegation of the Frente Polisario to address the Security Council when it considers the question of Western Sahara in the coming weeks.

I should be most grateful if you would circulate this letter to the members of the Security Council.

(*Signed*) Ahmed **Boukhari**
Representative of the Frente Polisario to the United Nations